

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

HOTEL & RESTAURANT EMPLOYEES)
HEALTH & WELFARE TRUST FUND,))
et al.,)

No. C09-4998 BZ

Plaintiff(s),)

**ORDER SCHEDULING COURT TRIAL
AND OTHER MATTERS**

v.)

INTERSTATE HOTELS & RESORTS,))
INC., et al.,)

Defendant(s).)
_____)

Following the Case Management Conference, **IT IS HEREBY
ORDERED** that the Case Management Statement is adopted, except
as expressly modified by this Order. It is further **ORDERED**
that:

1. DATES

Trial Date: **Thursday, 10/28/2010, 2 days**

Pretrial Conference: **Tuesday, 10/19/2010, 4:00 p.m.**

Last Day to Hear Dispositive Motions: **Wednesday, 8/25/2010**

Last Day for Expert Discovery: **Friday, 7/16/2010**

Last Day for Rebuttal Expert Disclosure: **Friday, 7/9/2010**

Last Day for Expert Disclosure: **Friday, 7/2/2010**

1 Close of Non-expert Discovery: **Friday, 6/25/2010**

2 2. DISCLOSURE AND DISCOVERY

3 The parties are reminded that a failure to voluntarily
4 disclose information pursuant to Federal Rule of Civil
5 Procedure 26(a) or to supplement disclosures or discovery
6 responses pursuant to Rule 26(e) may result in exclusionary
7 sanctions. Thirty days prior to the close of non-expert
8 discovery, lead counsel for each party shall serve and file a
9 certification that all supplementation has been completed.

10 In the event a discovery dispute arises, **lead counsel** for
11 each party shall meet in person or, if counsel are outside the
12 Bay Area, by telephone and make a good faith effort to resolve
13 their dispute. Exchanging letters or telephone messages about
14 the dispute is insufficient. The Court does not read
15 subsequent positioning letters; parties shall instead make a
16 contemporaneous record of their meeting using a tape recorder
17 or a court reporter.

18 In the event they cannot resolve their dispute, the
19 parties must participate in a telephone conference with the
20 Court **before** filing any discovery motions or other papers.
21 The party seeking discovery shall request a conference in a
22 letter filed electronically not exceeding two pages (with no
23 attachments) which briefly explains the nature of the action
24 and the issues in dispute. Other parties shall reply in
25 similar fashion within two days of receiving the letter
26 requesting the conference. The Court will contact the parties
27 to schedule the conference.

28 3. MOTIONS

1 Consult Civil Local Rules 7-1 through 7-5 and this
2 Court's standing orders regarding motion practice. Motions
3 for **summary judgment** shall be accompanied by a statement of
4 the material facts not in dispute supported by citations to
5 admissible evidence. The parties shall file a joint statement
6 of undisputed facts where possible. If the parties are unable
7 to reach complete agreement after meeting and conferring, they
8 shall file a joint statement of the undisputed facts about
9 which they do agree. Any party may then file a separate
10 statement of the additional facts that the party contends are
11 undisputed. A party who without substantial justification
12 contends that a fact is in dispute is subject to sanctions.

13 In addition to **lodging** a Chambers copy of all papers, a
14 Chambers copy of all briefs shall be e-mailed in WordPerfect
15 or Word format to the following address:
16 bzpo@cand.uscourts.gov.

17 4. SETTLEMENT

18 If the parties wish to have a settlement conference
19 before a Magistrate Judge, they shall notify chambers.

20 5. PRETRIAL CONFERENCE

21 Not less than thirty days prior to the date of the
22 pretrial conference, the parties shall meet and take all steps
23 necessary to fulfill the requirements of this Order.

24 Not less than twenty-one days prior to the pretrial
25 conference, the parties shall: (1) serve and file a joint
26 pretrial statement, containing the information listed in
27 **Attachment 1**, and a proposed pretrial order; (2) serve and
28 file trial briefs, Daubert motions, proposed findings of fact

1 and conclusions of law, and statements designating excerpts
2 from discovery that will be offered at trial (specifying the
3 witness and page and line references); (3) exchange exhibits,
4 agree on and number a joint set of exhibits and number
5 separately those exhibits to which the parties cannot agree;
6 (4) deliver all marked trial exhibits directly to the
7 courtroom clerk, Ms. Yiu; (5) deliver one extra set of all
8 marked exhibits directly to Chambers; and (6) submit all
9 exhibits in three-ring binders. Each exhibit shall be marked
10 with an exhibit label as contained in **Attachment 2**. The
11 exhibits shall also be separated with correctly marked side
12 tabs so that they are easy to find.

13 No party shall be permitted to call any witness or offer
14 any exhibit in its case in chief that is not disclosed at
15 pretrial, without leave of Court and for good cause.

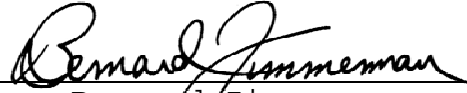
16 Lead trial counsel for each party shall meet and confer
17 in an effort to resolve all disputes regarding anticipated
18 testimony, witnesses and exhibits. Not less than eleven days
19 prior to the pretrial conference, the parties shall serve and
20 file any objections to witnesses or exhibits or to the
21 qualifications of an expert witness, and any oppositions to
22 Daubert motions. There shall be no replies.

23 A copy of all pretrial submissions, except for exhibits,
24 shall be e-mailed in WordPerfect or Word format to the
25 following address: bzpo@cand.uscourts.gov.

26 At the time of filing the original with the Clerk's
27 Office, two copies of all documents (but only one copy of the
28 exhibits) shall be delivered directly to Chambers (Room 15-

6688). Chambers' copies of all pretrial documents shall be
three-hole punched at the side, suitable for insertion into
standard, three-ring binders.

Dated: February 9, 2010

A handwritten signature in black ink, appearing to read "Bernard Zimmerman", is written over a horizontal line.

Bernard Zimmerman
United States Magistrate Judge

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ATTACHMENT 1

The parties shall file a joint pretrial conference statement containing the following information:

(1) The Action.

(A) Substance of the Action. A brief description of the substance of claims and defenses which remain to be decided.

(B) Relief Prayed. A detailed statement of each party's position on the relief claimed, particularly itemizing all elements of damages claimed as well as witnesses, documents or other evidentiary material to be presented concerning the amount of those damages.

(2) The Factual Basis of the Action.

(A) Undisputed Facts. A plain and concise statement of all relevant facts not reasonably disputable, as well as which facts parties will stipulate for incorporation into the trial record without the necessity of supporting testimony or exhibits.

(B) Disputed Factual Issues. A plain and concise statement of all disputed factual issues which remain to be decided.

(C) Agreed Statement. A statement assessing whether all or part of the action may be presented upon an agreed statement of facts.

(D) Stipulations. A statement of stipulations requested or proposed for pretrial or trial purposes.

(3) Trial Preparation.

A brief description of the efforts the parties have

1 made to resolve disputes over anticipated testimony,
2 exhibits and witnesses.

3 (A) Witnesses to be Called. In
4 lieu of FRCP 26(a)(3)(A), a
5 list of all witnesses likely
6 to be called at trial, other
7 than solely for impeachment or
8 rebuttal, together with a
9 brief statement following each
10 name describing the substance
11 of the testimony to be given.

12 (B) Estimate of Trial Time. An
13 estimate of the number of
14 court days needed for the
15 presentation of each party's
16 case, indicating possible
17 reductions in time through
18 proposed stipulations, agreed
19 statements of facts, or
20 expedited means of presenting
21 testimony and exhibits.

22 (C) Use of Discovery Responses. In
23 lieu of FRCP 26(a)(3)(B), cite
24 possible presentation at trial
25 of evidence, other than solely
26 for impeachment or rebuttal,
27 through use of excerpts from
28 depositions, from
interrogatory answers, or from
responses to requests for
admission. Counsel shall
state any objections to use of
these materials and that
counsel has conferred
respecting such objections.

(D) Further Discovery or Motions.
A statement of all remaining
motions, including Daubert
motions.

23 **(4) Trial Alternatives and Options.**

24 (A) Settlement Discussion. A
25 statement summarizing the
26 status of settlement
27 negotiations and indicating
28 whether further negotiations
are likely to be productive.

(B) Amendments, Dismissals. A
statement of requested or

1 proposed amendments to
2 pleadings or dismissals of
3 parties, claims or defenses.

4 (C) Bifurcation, Separate Trial of
5 Issues. A statement of whether
6 bifurcation or a separate
7 trial of specific issues is
8 feasible and desired.

9 (5) **Miscellaneous.**

10 Any other subjects relevant to the trial of the action,
11 or material to its just, speedy and inexpensive
12 determination.
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ATTACHMENT 2

USDC
Case No. CV09-04998 BZ
JOINT Exhibit No. _____

Date Entered _____

Signature _____

USDC
Case No. CV09-04998 BZ
JOINT Exhibit No. _____

Date Entered _____

Signature _____

USDC
Case No. CV09-04998 BZ
PLNTF Exhibit No. _____

Date Entered _____

Signature _____

USDC
Case No. CV09-04998 BZ
PLNTF Exhibit No. _____

Date Entered _____

Signature _____

USDC
Case No. CV09-04998 BZ
DEFT Exhibit No. _____

Date Entered _____

Signature _____

USDC
Case No. CV09-04998 BZ
DEFT Exhibit No. _____

Date Entered _____

Signature _____

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Signature _____

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Date Entered _____

Signature _____
